

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|------------------------------------|---|--------------|
| UNITED STATES OF AMERICA, ex rel. | : | |
| ANTHONY R. SPAY, | : | |
| | : | CIVIL ACTION |
| Plaintiff, | : | |
| | : | |
| v. | : | NO. 09-4672 |
| | : | |
| CVS CAREMARK CORPORATION; | : | |
| CAREMARK Rx, LLC (f/k/a CAREMARK | : | |
| Rx, Inc.); CAREMARK, LLC (f/k/a | : | |
| CAREMARK, INC.); SILVERSCRIPT, LLC | : | |
| (f/k/a SILVERSCRIPT INC.), | : | |
| | : | |
| Defendants. | : | |

ORDER

AND NOW, this 23rd day of *April*, 2013, upon consideration of Plaintiff/Relator Anthony Spay's Motion to Strike Defendants' Affirmative Defenses (Docket No. 81), the Response by Defendants CVS Caremark Corporation, Caremark Rx, LLC, Caremark, LLC, and Silverscript, LLC (collectively "Defendants") Response (Docket No. 89), and Plaintiff's Reply Brief (Docket No. 91), it is hereby **ORDERED** that the Motion is **GRANTED IN PART and DENIED IN PART** as follows:

1. With Respect to the allegation of unclean hands in Defendants' Twelfth Affirmative Defense and Defendants' Twenty-Fifth Affirmative Defense, these Defenses are **STRICKEN** after being voluntarily withdrawn by Defendants.
2. With respect to Defendants' First, Second, Tenth, Twenty-Third, and Twenty Eighth Affirmative Defenses, Plaintiff's Motion is **GRANTED**;
3. With respect to Defendants' Twelfth Affirmative Defense, Plaintiff's Motion is **GRANTED** to the extent this Defense challenges the Amended Complaint on grounds of laches, waiver, and ratification, but **DENIED** to the extent it

challenges the Amended Complaint on grounds of estoppel.

4. With respect to Defendants' Third Affirmative Defense, Plaintiff's Motion is **DENIED**, but Defendants shall only be allowed to proceed under the theory that there was a written agency response to a Freedom of Information Act request that publicly disclosed the PDE data at issue.
5. With respect to Defendants' Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, Fifteenth, Sixteenth, Seventeenth, and Eighteenth Affirmative Defenses, Plaintiff's Motion is **DENIED**.

It is so **ORDERED**.

BY THE COURT:

s/ Ronald L. Buckwalter

RONALD L. BUCKWALTER, S.J.